

Hearing Date and Time: October 13, 2017 at 9:30 a.m. (Prevailing Eastern Time)
Objection Date and Time: October 6, 2017 at 4:00 p.m. (Prevailing Eastern Time)

Peter J. Behmke
CURTIS, MALLAT-PREVOST, COLT & MOSLE LLP
101 PARK AVENUE
NEW YORK, NEW YORK 10178
*Attorneys for Lehman Brothers Holdings Inc. and
Certain of Its Affiliates*

Andrew J. Rossman
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 MADISON AVENUE
NEW YORK, NEW YORK 10010
*Attorneys for Official Committee of Unsecured Creditors of
Lehman Brothers Holdings Inc.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**
:
LEHMAN BROTHERS HOLDINGS INC., et al., : **08-13555 (SCC)**
:
Debtors. : **(Jointly Administered)**
:
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**NOTICE OF MOTION PURSUANT TO RULE 9019 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE AND SECTION 105(a) OF THE
BANKRUPTCY CODE FOR APPROVAL OF SETTLEMENT AGREEMENT
AMONG CITIBANK, N.A., AND CERTAIN OF ITS AFFILIATES, AND LEHMAN
BROTHERS HOLDINGS INC., AND CERTAIN OF ITS AFFILIATES**

PLEASE TAKE NOTICE that a hearing on the annexed motion, dated September 29,
2017 (the "Motion"), of Lehman Brothers Holdings Inc. ("LBHI" and the "Plan Administrator"),
as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman
Brothers Holdings Inc. and Its Affiliated Debtors*, on behalf of itself, Lehman Brothers Special

Financing Inc. (“LBSF”) and the other Lehman Entities,¹ together with the Official Committee of Unsecured Creditors (the “Creditors’ Committee,” and together with LBHI, the “Movants”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) for approval of a settlement agreement among the Plan Administrator, on behalf of LBHI, LBSF and the other Lehman Entities, and Citibank, N.A. (“Citibank”) and the other Citibank Entities,² all as more fully described in the Motion, will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, Courtroom 623, One Bowling Green, New York, New York 10004 (the “Bankruptcy Court”), on October 13, 2017 at 9:30 a.m. (Prevailing Eastern Time) (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court for the Southern District of New York, shall set forth the name of the objecting party, the basis for the objection and the specific grounds thereof, shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court’s case filing system and by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with two hard copies

¹ As used herein, the term “Lehman Entities” means LBHI, LBSF, Lehman Brothers Commercial Corp. (“LBCC”), Lehman Brothers Commodity Services Inc. (“LBCS”), and Lehman Brothers Financial Products Inc. (“LBFP”).

² As used herein, the term “Citibank Entities” means Citibank, Citigroup Global Markets Inc. (“CGMI”), Citigroup Financial Products Inc. (“Citi Financial”), Citigroup Global Markets Ltd. (“CGML”), Citi Canyon Ltd. (“Citi Canyon”), CitiMortgage, Inc. (“CitiMortgage”), Citibank A.S., Citibank Korea Inc. (“Citi Korea”), Citi Swapco Inc. (“Citi Swapco”), and Citigroup Energy Inc. (“Citi Energy”).

delivered directly to Chambers), and shall be served upon: (i) the chambers of the Honorable Shelley C. Chapman, One Bowling Green, New York, New York 10004, Courtroom 623; (ii) attorneys for LBHI and certain of its affiliates, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178 (Attn: Turner P. Smith and Peter J. Behmke); (iii) attorneys for the Creditors' Committee, Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010 (Attn: Andrew J. Rossman, Christopher Kercher and Calli Ray); (iv) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: William K. Harrington, Esq., Susan Golden, Esq. and Andrea B. Schwartz, Esq.); and (v) attorneys for Citibank, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064 (Attn: Stephen Shimshak and Claudia Hammerman), so as to be so filed and received by no later than October 6, 2017 at 4:00 p.m. (Prevailing Eastern Time) (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that if an objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

[signature page follows]

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the
Hearing and failure to appear may result in relief being granted or denied upon default.

Dated: September 29, 2017
New York, New York

CURTIS, MALLET-PREVOST, COLT & MOSLE
LLP

By: /s/ Peter J. Behmke
Peter J. Behmke
*Attorneys for Lehman Brothers Holdings Inc. and
Certain of Its Affiliates*

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

By: /s/ Andrew J. Rossman
Andrew J. Rossman
*Attorneys for the Official Committee of
Unsecured Creditors*

Peter J. Behmke
CURTIS, MALLETT-PREVOST, COLT & MOSLE LLP
101 PARK AVENUE
NEW YORK, NEW YORK 10178
*Attorneys for Lehman Brothers Holdings Inc. and
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Andrew J. Rossman
QUINN EMANUEL URQUHART & SULLIVAN, LLP
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NEW YORK, NEW YORK 10010
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11 Case No.
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LEHMAN BROTHERS HOLDINGS INC., et al.,	: 08-13555 (SCC)
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Debtors.	: (Jointly Administered)
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**MOTION PURSUANT TO RULE 9019 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE AND SECTION 105(a) OF THE
BANKRUPTCY CODE FOR APPROVAL OF SETTLEMENT AGREEMENT
AMONG CITIBANK, N.A., AND CERTAIN OF ITS AFFILIATES, AND
LEHMAN BROTHERS HOLDINGS INC., AND CERTAIN OF ITS AFFILIATES**

TO THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc. (“LBHI” and the “Plan Administrator”), as Plan
Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman
Brothers Holdings Inc. and Its Affiliated Debtors* (the “Plan”), on behalf of itself,

Lehman Brothers Special Financing Inc. (“LBSF”) and the other Lehman Entities,³ and the Official Committee of Unsecured Creditors (the “Creditors’ Committee,” and together with LBHI, the “Movants”), file this motion (the “Motion”) and respectfully represent:

Relief Requested

1. By this Motion, the Movants seek approval, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), of a global settlement of disputes among the Lehman Entities and the Citibank Entities⁴ (the “Settlement”), the terms of which are set forth in that certain Settlement Agreement, dated as of September 29, 2017 among the Citibank Entities, the Lehman Entities, and the Creditors Committee (the “Settlement Agreement”),⁵ and request that such approval be immediately effective

³ As used herein, the term “Lehman Entities” means LBHI, LBSF, Lehman Brothers Commercial Corp. (“LBCC”), Lehman Brothers Commodity Services Inc. (“LBCS”), and Lehman Brothers Financial Products Inc. (“LBFP”).

⁴ As used herein, the term “Citibank Entities” means Citibank, N.A. (“Citibank”), Citigroup Global Markets Inc. (“CGMI”), Citigroup Financial Products Inc. (“Citi Financial”), Citigroup Global Markets Ltd. (“CGML”), Citi Canyon Ltd. (“Citi Canyon”), CitiMortgage, Inc. (“CitiMortgage”), Citibank A.S., Citibank Korea Inc. (“Citi Korea”), Citi Swapco Inc. (“Citi Swapco”), and Citigroup Energy Inc. (“Citi Energy”).

⁵ The summary of the Settlement Agreement herein is qualified in its entirety by the terms and conditions of the Settlement Agreement. The terms and conditions of the Settlement Agreement control to the extent that there is any conflict or inconsistency between this summary and the Settlement Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Settlement Agreement. In the event the Settlement Agreement does not become effective for any reason, the Parties agree that neither this Motion, the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance thereof shall be deemed to be, or used as, an admission with respect to, or waiver of, any right, claim or defense

and enforceable. The Settlement Agreement provides for the resolution of all Disputed Matters between the parties thereto, and puts an end to years of contentious litigation.

2. Under the Settlement Agreement, approximately \$1.74 billion will be returned to the Lehman Entities. Prior to the Petition Date, LBHI had deposited \$2 billion with Citibank. Prior to the date of this Motion, the Lehman Entities maintained deposit accounts with Citibank with an aggregate balance of approximately \$2,093,445,729. Under the Settlement Agreement, Citibank will return, and LBHI will receive, approximately \$1,743,445,729 from those deposit accounts. The Lehman Entities and the Citibank Entities will dismiss the Relevant Adversary Proceedings (as defined below) and execute broad general releases. The Settlement Agreement was negotiated in good faith and at arm's length, and from the standpoint of the Lehman Entities, falls above the lowest range of reasonableness, as required by the cases applying Bankruptcy Rule 9019.

3. The Plan Administrator has determined, in the exercise of its sound business judgment, that the Settlement Agreement is in the best interests of LBHI, LBSF, the other Lehman Entities, and their respective estates and creditors. Entry of an order approving and authorizing the Settlement Agreement is a condition precedent to the effectiveness of the Settlement Agreement.

Procedural Background

4. Commencing on September 15, 2008, and periodically thereafter (as

asserted by the Citibank Entities or Lehman Entities in the Relevant Adversary Proceedings (as defined herein) or with respect to any of the Relevant Claims (as defined herein).

applicable, the “Commencement Date”), LBHI and certain of its subsidiaries, including LBSF, commenced with this Court voluntary cases (together, the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code.

5. On September 14, 2010, LBSF commenced Adversary Proceeding No. 10-03547 (SCC), captioned *Lehman Bros. Special Financing Inc. v. Bank of America N.A., et al., (In re Lehman Bros. Holdings Inc.)*, Case No. 08-13555 (SCC) (the “Bank of America Litigation”), challenging, among other things, (a) the enforceability of certain contractual provisions purporting to modify LBSF’s right to receive payments in connection with the early termination of certain swap agreements with certain issuers of notes; and (b) the distribution of funds to certain holders of notes. LBSF named Citibank as a “Trustee Defendant” and a “Noteholder Defendant,” and Citicorp Nominees Pty Ltd. (“Citi Nominees”) and CGMI as “Noteholder Defendants” in the Bank of America Litigation.

6. On September 14, 2010, LBSF commenced Adversary Proceeding No. 10-03542 (SCC), captioned *Lehman Bros. Special Financing Inc. v. U.S. Bank N.A., et al., (In re Lehman Bros. Holdings Inc.)*, Case No. 08-13555 (SCC) (the “U.S. Bank Litigation”), challenging, among other things, the enforceability of certain contractual provisions purporting to modify LBSF’s right to receive payments in connection with the early termination of certain swap agreements with certain issuers of notes.

7. On September 14, 2010, LBFP commenced Adversary Proceeding No. 10-03544 (SCC), captioned *Lehman Brothers Financial Products Inc. v. The Bank of New York Mellon Trust Co. N.A., et al., (In re Lehman Brothers Holdings Inc.)*, Case No. 08-

13555 (SCC) (the “LBFP BNY Litigation”), challenging, among other things, the enforceability of certain contractual provisions purporting to modify LBFP’s right to receive payments in connection with the early termination of certain swap agreements with certain issuers of notes.

8. On September 14, 2010, LBSF commenced Adversary Proceeding No. 10-03545 (SCC), captioned *Lehman Brothers Special Financing Inc. v. The Bank of New York Mellon Trust Corp., et al., (In re Lehman Brothers Holdings Inc.)*, (the “LBSF BNY Litigation”), challenging, among other things, the enforceability of certain contractual provisions purporting to modify LBSF’s right to receive payments in connection with the early termination of certain swap agreements with certain issuers of notes.

9. On October 1, 2010, LBSF commenced Adversary Proceeding No. 10-03809 (SCC), captioned *Lehman Bros. Special Financing Inc. v. Wells Fargo N.A., et al., (In re Lehman Bros. Holdings Inc.)*, Case No. 08-13555 (SCC) (the “Wells Fargo Litigation,” and together with the Bank of America Litigation, the U.S. Bank Litigation, the LBFP BNY Litigation, and the LBSF BNY Litigation, the “Flip Clause Litigation”), challenging, among other things, the enforceability of certain contractual provisions purporting to modify LBSF’s right to receive payments in connection with the early termination of certain swap agreements with certain issuers of notes.

10. On December 6, 2011, the Court approved and entered an order confirming the Plan [ECF No. 23023]. The Plan became effective on March 6, 2012.

11. On February 8, 2012, LBHI commenced Adversary Proceeding No. 12-1043 (SCC), captioned *Lehman Bros. Holdings Inc. v. CitiMortgage, Inc., (In re Lehman*

Bros. Holdings Inc.), Case No. 08-13555 (SCC) (the “CitiMortgage Litigation”), seeking, among other things, to recover or to avoid the transfer of certain settlement funds allegedly transferred by LBHI to CitiMortgage on or about August 29, 2008. CitiMortgage filed an answer to LBHI’s Complaint, [ECF No. 21], dated September 19, 2014, denying all claims and asserting numerous defenses.

12. On February 8, 2012, LBHI, LBSF, LBCS, LBCC, and the Creditors’ Committee (collectively, “Plaintiffs”) commenced Adversary Proceeding No. 12-1044 (SCC), captioned *Lehman Bros. Holdings Inc., et al v. Citibank, N.A., et al., (In re Lehman Bros. Holdings Inc.)*, Case No. 08-13555 (SCC) (the “Citibank Litigation,” and together with the Flip Clause Litigation and the CitiMortgage Litigation, the “Relevant Adversary Proceedings”). On December 19, 2014, Plaintiffs’ filed their *Third Amended Complaint and Claims Objection*, [ECF No. 99], in the Citibank Litigation (the “Amended Complaint”). Pursuant to the Amended Complaint, Plaintiffs, among other things: (a) challenge Citibank’s ability to set off against a \$2 billion cash deposit of LBHI; (b) challenge the validity and enforceability of a September 9, 2008 amendment to a Guaranty dated January 7, 2004; (c) challenge Citibank’s alleged retention of \$204 million owed to LBCC under the Citibank CLS Settlement Services Amended and Restated Agreement for CLS User Members among Lehman Brothers Inc. (“LBI”), LBCC, and Citibank, N.A. (London Branch), dated as of October 28, 2004 (“CLS Agreement”); (d) challenge approximately \$15 million in Disputed CLS Transfers (as defined below); (e) challenge the amount and validity of various “Citi Derivatives Claims” (as later defined herein) arising from the early termination of various swap

agreements and other financial derivatives contracts, and assert that the Citibank Entities owe the Lehman Entities more than \$200 million as a result of such early terminations; (f) seek the return of LBHI's \$2 billion cash deposit; (g) seek the disallowance, reduction, and equitable subordination of Citi's claims, including the Citi Derivatives Claims; and (h) seek damages, as well as statutory interest under New York law and other costs and fees.⁷

13. The Citibank Entities that are defendants in the Citibank Litigation (collectively, the "Citi Defendants") filed an answer to the Amended Complaint, dated April 9, 2015, [ECF No. 107] (the "Answer"), denying all claims and asserting numerous defenses.

14. The Parties engaged in extensive fact and expert discovery over the course of almost five years. Party and third-party productions totaled over 1.4 million documents, over thirty expert witnesses provided expert reports, and approximately 170 depositions were taken in the case. Multiple summary judgment motions were filed, including with respect to Citibank's claims against LBHI for post-petition interest and fees, Citibank's ability to set off LBHI's \$2 billion cash deposit, the validity and enforceability of the September 9, 2008 amendment to a Guaranty dated January 7, 2004, and whether certain trades were rightfully within the trade population for Citi Derivatives Claims.

⁷ On March 12, 2015, the Court so-ordered that certain *Stipulation Dismissing Counts IX And X Of The Third Amended Complaint With Prejudice* [ECF No. 106], pursuant to which Plaintiffs' dismissed claims against Citibank for recovery of a \$500 million transfer allegedly made to Citibank on or about September 14, 2008.

15. Following discovery and substantial pre-trial motion practice (including motions *in limine*), trial of the Citibank Litigation commenced on April 25, 2017. Over the next four months, the Court presided over 42 days of trial, including substantial fact and expert testimony.

16. In late August, 2017, the Parties agreed to renew settlement discussions and invited the Court to confer during the process. In early September 2017, those settlement discussions commenced, following a five-day mediation, on September 13, 2017, the Parties agreed to the terms of a global settlement, the terms of which are embodied in the Settlement Agreement, resolving all of the Settled Claims (as defined below) and dismissing the Relevant Adversary Proceedings pursuant to the terms of the Settlement Agreement.

Jurisdiction

17. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Disputed Matters

18. The Settlement Agreement provides for the resolution of all Disputed Matters between the Lehman Entities and the Citibank Entities.⁸

19. First, the Settlement Agreement resolves all of the Relevant Claims

⁸ The Settlement Agreement defines “Disputed Matters” as “the Relevant Claims and the Relevant Adversary Proceedings, including any and all Actions arising from or relating to the matters, facts, and circumstances described in the Relevant Claims and the Relevant Adversary Proceedings.”

asserted by the Citibank Entities against the Lehman Entities, including the following proofs of claim, including any claims for post-petition interest, fees, and costs against any of the Lehman Entities on account of such claims (collectively, the “Settled Claims”):⁹

Creditor	Debtor	Claim #
Citibank	LBHI	797
Citibank	LBCS	17932
Citibank	LBHI	29873
Citibank	LBSF	67733
Citibank	LBCC	67734
Citibank	LBHI	67736
CGMI	LBHI	68119
Citi Financial	LBSF	17926*
Citi Financial	LBHI	29637*
CGML	LBCS	29880
CGML	LBSF	29881
CGML	LBHI	29882
Citi Canyon	LBSF	17895
CitiMortgage	LBHI	17899
Citi Canyon	LBHI	17913
Citibank A.S.	LBHI	17918
Citibank (as assignee of Citi Korea)	LBHI	17921*
Citi Swapco	LBSF	17933
Citi Swapco	LBHI	17934
Citi Energy	LBHI	17936
Citi Energy	LBCS	17937

* Settled Claims do not include certain portions of the proof of claim allowed pursuant to prior settlement agreement dated September 3, 2015 among certain of the Lehman Entities and Citibank Entities.

20. Second, the Settlement Agreement resolves all of the pending litigation in the Relevant Adversary Proceedings between the Citibank Entities and the Lehman

⁹ The Settlement Agreement does not affect any claims held by the Citibank Entities that were asserted in properly filed proofs of claim and not otherwise identified in the Schedules to the Settlement Agreement.

Entities before this Court, including the Citibank Litigation, the CitiMortgage Litigation and the Flip Clause Litigation, each as more fully described below.

The Citibank Litigation

21. Plaintiffs' Amended Complaint in the Citibank Litigation involves numerous disputed issues concerning, among other things, the amount and validity of the Citi Derivatives Claims (as defined below), Citibank's status as secured creditor and whether Citibank is entitled to offset certain of its claims against certain of the Lehman Entities' deposit accounts, Citibank's entitlement to post-petition interest on its claims, and claims related to Citibank's provision of services under the CLS Agreement and LBHI's guarantee thereof. All of these issues will be resolved under the Settlement Agreement.

The Citi Derivatives Claims

22. Prior to the Commencement Date, certain LBHI-affiliated parties (the "Lehman Subsidiaries")¹⁰ traded financial derivatives with certain of the Citibank Entities pursuant to certain master agreements (collectively, the "Master Agreements"), including: the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of October 6, 2005 among LBSF and Citi Canyon (the "LBSF-Canyon Agreement"); the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of May 14, 1992 among Citibank, N.A., New York and LBSF (the "LBSF-Citibank Agreement"); the 1987 ISDA Interest Rate and Currency Exchange Agreement dated as of August 15, 1989

¹⁰ As used herein, the term "Lehman Subsidiaries" means LBSF, LBCC, and LBCS.

among Salomon Brothers Holding Company Inc. (n/k/a Citi Financial) and LBSF (the “LBSF-Financial Agreement”); the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of February 16, 2000 among Salomon Brothers International Limited (n/k/a CGML) and LBSF (the “LBSF-CGML Agreement”); the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of March 29, 1993 among Citibank, N.A., New York and LBCC (the “LBCC-Citibank Agreement”); the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of February 1, 2006 among LBCS and Citi Energy (the “LBCS-Energy Agreement”); the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of April 17, 2007 among LBCS and CGML (the “LBCS-CGML ISDA Agreement”); the EFET General Agreement Concerning the Delivery and Acceptance of Electricity Version 2.1(a) dated as of March 13, 2008 among LBCS and CGML (the “LBCS-CGML EFET Agreement”); and the 1992 ISDA Master Agreement (Multicurrency-Cross Border) dated as of August 16, 1996 among Salomon Swapco Inc. (n/k/a Citi Swapco) and LBSF (the “LBSF-Swapco Agreement”).

23. On August 29, 2008, the Lehman Subsidiaries and certain of the Citibank Entities entered into the Close-out Amount Multilateral Agreement (the “Close-out Amount Agreement”) which amended certain of the Master Agreements¹¹ to specify that the parties agreed to use the “Close-out Amount” method to determine the settlement amount due upon early termination, so that the Early Termination Amount upon an Event

¹¹ The following seven Master Agreements were amended by the Close-out Amount Agreement: the LBSF-Citibank Agreement, the LBSF-Financial Agreement, the LBSF-CGML Agreement, the LBCC-Citibank Agreement, the LBCS-Energy Agreement, the LBCS-CGML ISDA Agreement, and the LBSF-Swapco Agreement.

of Default would be calculated by the Non-Defaulting Party pursuant to the Close-out Amount definition in the 2002 ISDA Master Agreement. The Close-out Amount Agreement did not amend the LBSF-Canyon Agreement or the LBCS-CGML EFET Agreement.

24. LBHI was a guarantor of the Lehman Subsidiaries' obligations under each of the Master Agreements. Its chapter 11 filing was an Event of Default under the Master Agreements. The Citi Defendants terminated the Master Agreements on or after the Commencement Date. Under each of the Master Agreements, the terminating party was designated as the party (the "Determining Party") responsible for providing a calculation statement setting forth the amounts due (if any) among the parties upon termination, and each of the Master Agreements contained provisions governing the calculation of such amounts (the "Early Termination Amounts"). The seven Master Agreements that had been amended by the Close-out Amount Agreement required the Determining Party to calculate the respective Early Termination Amount in accordance with the definition of "Close-out Amount" as provided in the form 2002 ISDA Master Agreement. The LBSF-Canyon Agreement required the Determining Party to calculate the Early Termination Amount in accordance with the definition of "Market Quotation" or, under certain circumstances, the definition of "Loss," as provided therein. The LBCS-CGML EFET Agreement required the Determining Party to calculate the Early Termination Amount in accordance with the definition of "Settlement Amount" provided therein.

25. The Citi Defendants calculated the Early Termination Amounts and filed bankruptcy claims for the Early Termination Amounts in the Chapter 11 Cases, including

claims against LBHI as guarantor of the Lehman Subsidiaries' obligations (collectively, the "Citi Derivatives Claims"). The Citi Derivatives Claims are asserted in the following proofs of claim filed in the Chapter 11 Cases:

Creditor	Debtor	Claim #
Citibank	LBSF	67733
Citibank	LBCC	67734
Citibank	LBHI	67736
Citi Financial	LBSF	17926
Citi Financial	LBHI	29637
CGML	LBCS	29880
CGML	LBSF	29881
CGML	LBHI	29882
Citi Canyon	LBSF	17895
Citi Canyon	LBHI	17913
Citi Swapco	LBSF	17933
Citi Swapco	LBHI	17934
Citi Energy	LBHI	17936
Citi Energy	LBCS	17937

26. In the Amended Complaint, Plaintiffs allege that the Citibank Defendants' calculation of the Early Termination Amounts breached the terms of the respective Master Agreements and seek various relief, including, among other things, a judgment (a) sustaining Plaintiffs' objections to the Citi Derivatives Claims and reducing, disallowing, or expunging such claims, (b) determining that the Citi Defendants breached the Master Agreements and owe the Lehman Subsidiaries damages of approximately \$200 million, and (c) equitably subordinating the Citi Derivatives Claims.

27. In the Answer, the Citibank Defendants deny all claims and assert numerous defenses.

28. The dispute among Plaintiffs and the Citibank Defendants over the Citi Derivatives Claims has been proceeding before this Court as part of the Citibank

Litigation and will be resolved pursuant to the Settlement Agreement.

Citibank's Right of Setoff Against the \$2 Billion Deposit

29. On June 12, 2008, LBHI placed a \$2 billion deposit with Citibank which remained at Citibank through LBHI's bankruptcy filing and which, pursuant to the Stipulation and Order dated April 15, 2009, was transferred to Account No. 204354000 at Citibank (the "\$2 Billion Deposit"). In Proofs of Claim Nos. 29873 and 67736 against LBHI, Citibank asserts that various claims asserted in the Chapter 11 Cases, including certain of the Citi Derivatives Claims, are secured by the \$2 Billion Deposit (and other LBHI deposits) pursuant to a purported right of setoff. In addition, Citibank asserts that, as a secured creditor and swap participant (as that term is defined by 11 U.S.C. § 101(53C)), it is entitled to post-petition interest on its claims.

30. In the Amended Complaint, Plaintiffs, among other things, challenge Citibank's retention of the \$2 Billion Deposit, challenge Citibank's entitlement to post-petition interest on its claims, and seek a judgment awarding LBHI damages against Citibank in an amount not less than \$2 billion, or in the alternative, ordering Citibank to return the \$2 Billion Deposit to LBHI's estate, as well as statutory interest under New York law and other costs and fees.

31. In the Answer, the Citibank Entities deny all claims and assert numerous defenses.

32. The disputes relating to the \$2 Billion Deposit and the parties' claims for post-petition or statutory interest have been proceeding before this Court as part of the Citibank Litigation and will be resolved pursuant to the Settlement Agreement.

The Bracebridge-Related Claims

33. Prior to the Commencement Date, LBSF traded financial derivatives with FFI Fund Ltd., FYI Ltd., and Olifant Fund, Ltd., funds controlled by Bracebridge Capital, LLC (collectively, “Bracebridge”). Plaintiffs allege that on September 11, 2008, LBSF, Citibank, and Bracebridge entered into a three-way step-out transaction (the “Collapse Transaction”), under which LBSF simultaneously terminated certain credit default swap transactions with Citibank (the “Terminated Trades”) and novated certain credit default swap transactions with Bracebridge to Citibank (the “Novated Trades”). Citibank and Bracebridge included the Terminated Trades and Novated Trades, respectively, in their proofs of claim against LBSF.

34. In the Amended Complaint, Plaintiffs allege, among other things, that the Collapse Transaction was binding and effective as of September 11, 2008, and as a result, no amounts are due from LBSF to Citibank on account of the Terminated Trades. In the Answer, the Citibank Entities deny all claims asserted by LBSF arising from the Collapse Transaction and assert numerous defenses.

35. On March 28, 2013, Bracebridge intervened as defendants in the Citibank Litigation, and, on March 9, 2015, filed an answer to the Amended Complaint asserting counterclaims against Plaintiffs, [ECF No. 104]. Bracebridge disputed the effectiveness of the Collapse Transaction and contended that the Novated Trades were part of the population of trades between LBSF and Bracebridge as of the Commencement Date.

36. On May 21, 2015, Lehman and Bracebridge reached a settlement and on June 9, 2015, this Court entered an order approving the *Stipulation Concerning Dismissal*

of Adversary Proceeding and Counterclaims Solely with Respect to Defendant Intervenors, [ECF No. 110], in the Citibank Litigation, dismissing with prejudice all claims and counterclaims among Plaintiffs and Bracebridge in the Citibank Litigation.

37. The dispute among Plaintiffs and the Citibank Defendants relating to the Collapse Transaction has been proceeding before this Court as part of the Citibank Litigation and will be resolved pursuant to the Settlement Agreement.

The CLS Related Claims

38. On or about September 9, 2008, LBHI and Citibank executed an amendment (the “September Amendment”) to the Guaranty dated as of January 7, 2004 by LBHI in favor of Citigroup and its subsidiaries and affiliates (the “2004 Guaranty”). Among other things, the September Amendment purported to include among the obligations covered by the 2004 Guaranty obligations of LBI and obligations arising under the CLS Agreement. On or about November 8, 2007, LBSF, Lehman Brothers International (Europe) (“LBIE”), and Citibank entered into an Affiliate Election Agreement.

39. Under the CLS Agreement and Affiliate Election Agreement, Citibank acted as the designated settlement member of LBI, LBCC, LBSF, and LBIE (each, a “Lehman CLS User” and collectively, the “Lehman CLS Users”) with CLS Bank, and Citibank cleared and settled foreign exchange transactions for the Lehman CLS Users through the CLS system.

40. Citibank provided CLS services during the week of September 15-19, 2008. However, Citibank alleges that during that week the Lehman CLS Users failed to

make all payments due to Citibank under the CLS Agreement, and Citibank accordingly withheld certain payments due to the Lehman CLS Users under the CLS Agreement.

Citibank terminated the CLS Agreement on September 19, 2008.

41. Beginning on September 19, 2008, Citibank unwound the currency positions of the Lehman CLS Users, calculated the final net currency positions of each of these entities, and asserted the final amounts due to, or from, as the case may be, each of the Lehman CLS Users (hereinafter, the “Citibank-CLS Unwind Amounts”).

42. Citibank asserts that the Citibank-CLS Unwind Amount for each Lehman CLS User includes amounts attributable to (1) the fee Citibank applied to trades transacted in the market to unwind the respective Lehman CLS User’s positions (the “Commercial Spread”), and (2) the costs allocated to the respective Lehman CLS User that Citibank claims it incurred in carrying short positions before unwinding them, netted against the gains on carrying that Lehman CLS User’s long currency positions (the “Cost of Carry”).

43. Citibank calculated the Citibank-CLS Unwind Amount for LBCC as a payable due from Citibank to LBCC of \$198,473,976 (the “Citibank-LBCC-CLS Unwind Amount”). Citibank filed Proof of Claim No. 67734 in the Chapter 11 Cases against LBCC (the “Citibank-LBCC Proof of Claim”) and in it, noted the Citibank-LBCC-CLS Unwind Amount. Citibank’s calculation of the Citibank-LBCC-CLS Unwind Amount includes (1) Commercial Spread amounts charged to LBCC on the relevant unwind trades totaling \$1,444,425 (the “LBCC-CLS Commercial Spread”) and (2) Cost of Carry allocated to LBCC of -\$135,038 (the “LBCC-CLS Cost of Carry”). On or about

September 19, 2008, Citibank debited \$4,510,919 (the “Disputed LBCC-CLS Debit”) from an account owned by LBCC used by both LBCC and LBIE for the settlement of CLS transactions, among other things, purportedly in partial settlement of amounts due from LBIE to Citibank under the CLS Agreement. In the Citibank-LBCC Proof of Claim, Citibank alleges, among other things, that (1) with respect to the LBCC-Citibank Agreement, the “[a]mount payable by LBCC as a result of the designation of an Early Termination Date [is \$18,017,039],” plus interest and legal fees (the “LBCC Swap Claim”) and (2) Citibank may set off the LBCC Swap Claim against amounts Citibank owes LBCC under the CLS Agreement (the “LBCC ISDA-CLS Setoff Claim”).

44. Citibank calculated the Citibank-CLS Unwind Amount for LBI as a receivable owing by LBI to Citibank of \$1,260,326,894 (the “Citibank-LBI-CLS Unwind Amount”), exclusive of interest and legal fees. Citibank filed Proof of Claim No. 67736 in the Chapter 11 Cases against LBHI alleging, among other things, that LBHI has guaranteed LBI’s obligations under the CLS Agreement (the “LBHI-CLS Guaranty Claim”) and asserting Citibank’s claim in respect of the Citibank-LBI-CLS Unwind Amount, and reserving the right to seek interest and legal fees. Citibank’s calculation of the Citibank-LBI-CLS Unwind Amount includes (1) Commercial Spread amounts charged to LBI on the relevant unwind trades totaling \$25,813,112 (the “LBI-CLS Commercial Spread”) and (2) Cost of Carry allocated to LBI of \$6,120,577 (the “LBI-CLS Cost of Carry”).

45. Citibank calculated the Citibank-CLS Unwind Amount for LBSF as a receivable owing by LBSF to Citibank of \$584,897 (the “Citibank-LBSF-CLS Unwind”).

Amount”), exclusive of interest and legal fees. Citibank filed Proof of Claim No. 67733 in the Chapter 11 Cases against LBSF (the “Citibank-LBSF Proof of Claim”), asserting, among other things, Citibank’s claim in respect of the Citibank-LBSF-CLS Unwind Amount, and reserving the right to seek interest and legal fees. Citibank’s calculation of the Citibank-LBSF-CLS Unwind Amount includes (1) Commercial Spread amounts charged to LBSF on the relevant unwind trades totaling \$560,640 (the “LBSF-CLS Commercial Spread”), and (2) Cost of Carry allocated to LBSF of \$135,016 (the “LBSF-CLS Cost of Carry”).

46. Before the Commencement Date, CGML and LBSF were parties to a credit default swap transaction, which bore the reference number in LBSF’s records of 20345417. Plaintiffs allege that CGML novated its interest in the credit default swap transaction to a third party and that in connection with that novation, CGML owed a payment to LBSF of \$9,823,000. Plaintiffs allege that on September 2, 2008, CGML paid \$9,823,000 to LBSF, and that on September 10, 2008, the September 2 payment was reversed through the Fed-Wire system. Plaintiffs further allege that on September 8, 2008, CGML paid \$9,823,000 to LBSF and that on September 15, 2008 the same amount (\$9,823,000) was included in that day’s CLS pay-in-pay-out schedule as an amount due from LBSF. CGML subsequently filed Proof of Claim No. 29881 in the Chapter 11 Cases (the “CGML Proof of Claim”), including a response to the Court-ordered Derivative Questionnaire. The Derivative Questionnaire reflects that CGML owed a “cash break” to LBSF of \$9,823,000, with identification number C61F00856 (hereinafter, the “Disputed LBSF Amount,” and together with the Disputed LBCC-CLS Debit, the

“Disputed CLS Transfers”). Plaintiffs assert that the novation transaction was intended to settle through the CLS system and that the amount Citibank claims LBSF owes to Citibank under the CLS Agreement has been inflated improperly by the Disputed LBSF Amount. Plaintiffs also assert that the Disputed LBSF Amount is not set forth in the CGML Proof of Claim. Citibank asserts that the Disputed LBSF Amount is a “cash break” that CGML owed LBSF under the parties’ credit default swap agreement and that the Disputed LBSF Amount is not payable by Citibank to LBSF as a Citibank-CLS Unwind Amount.

47. Because Citibank contends that the Citibank-CLS Unwind Amounts for the Lehman CLS Users were calculated in an integrated fashion such that the amounts are mutually dependent, Citibank was unwilling to pay to LBCC the amount that Citibank calculated it owed to LBCC under the CLS Agreement (net of available setoffs) unless and until Plaintiffs accepted Citibank’s calculation of the Citibank-CLS Unwind Amounts.

48. On May 14, 2013, this Court entered the *Stipulation and Order Between Plaintiffs Lehman Brothers Holdings Inc., Lehman Brothers Commercial Corp., Lehman Brothers Special Financing Inc., and Official Committee of Unsecured Creditors and Defendants Citibank, N.A. and Citigroup Global Markets Ltd. with Respect to Certain Continuous Linked Settlement Agreement Unwind Amounts*, [ECF No. 26], in the Citibank Litigation, approving a limited agreement by which, among other things, LBHI, LBCC, LBSF, and the Creditors’ Committee accepted Citibank’s calculation of (1) the Citibank-LBCC-CLS Unwind Amount due from Citibank to LBCC under the CLS

Agreement, (2) the Citibank-LBI-CLS Unwind Amount due from LBI to Citibank under the CLS Agreement, and (3) the Citibank-LBSF-CLS Unwind Amount due from LBSF to Citibank under the CLS Agreement, with certain exceptions and subject to the reservation of certain rights, in exchange for Citibank's agreement to pay the Citibank-LBCC-CLS Unwind Amount net of certain setoffs asserted by Citibank. Citibank paid to LBCC the amount of \$166,956,937, which represents (a) the Citibank-LBCC-CLS Unwind Amount, less (b) a holdback of \$31,517,039 to preserve Citibank's right, if any, to set off (i) the principal amount of the LBCC Swap Claim (\$18,017,039) and (ii) interest on the principal amount of the LBCC Swap Claim (\$13,500,000).

49. In the Amended Complaint, Plaintiffs, among other things, challenge the September Amendment under 11 U.S.C. §§ 544 and 548 and New York state law, and object to the LBHI-CLS Guaranty Claim "to the extent" it is "based on improper calculations of the amounts alleged to be owed." Plaintiffs also seek in the Amended Complaint a judgment awarding damages for Citibank's retention of funds owing to LBCC, sustaining objections to Citibank's claims arising under the CLS Agreement, and awarding damages to LBSF in an amount not less than \$14.3 million on account of the Disputed CLS Transfers.

50. In the Answer, the Citibank Entities deny all claims and assert numerous defenses.

51. The disputes among Plaintiffs and the Citibank Entities relating to the September Amendment, the CLS Agreement, and the Affiliate Election Agreement have been proceeding before this Court as part of the Citibank Litigation and will be resolved

pursuant to the Settlement Agreement.

The CitiMortgage Litigation

52. On or about August 29, 2008, LBHI and CitiMortgage entered into an agreement (the “CitiMortgage Agreement”), whereby LBHI allegedly transferred \$10,000,000 (the “CitiMortgage Payment”) in settlement of certain claims previously asserted by CitiMortgage against LBHI. LBHI contends that the CitiMortgage Payment was made within 90 days of the Commencement Date, and that LBHI had become insolvent and/or undercapitalized as of August 29, 2008. LBHI further contends that it did not receive reasonably equivalent value in return for the CitiMortgage Payment.

53. In the CitiMortgage Litigation, LBHI seeks, among other things, to avoid the CitiMortgage Payment as a preferential transfer pursuant to 11 U.S.C. § 547(b) and as a constructively fraudulent transfer pursuant to 11 U.S.C. §§ 544 and 548 and applicable state law; to recover and automatically preserve the \$10,000,000 for the benefit of the estate pursuant to 11 U.S.C. §§ 550(a) and 551.

54. In its answer, CitiMortgage denies all claims and asserts numerous defenses.

55. The CitiMortgage Litigation has been proceeding before this Court and will be resolved pursuant to the Settlement Agreement.

The Flip Clause Litigation

56. At various times prior to the Commencement Date, LBSF entered into credit default swap transactions (the “Swaps”) evidenced by agreements (the “Swap Agreements”) with certain special-purpose entities (the “Issuers”). Under the Swap

Agreements, the Issuers sold “credit protection” to LBSF with respect to various entities (collectively, the “Reference Entities”) in exchange for periodic premium payments by LBSF to the respective Issuer.

57. Each of the Issuers, along with its respective trustee(s) (the “Trustees”), entered into an indenture (the “Indentures”). The Indentures, among other things, govern the Issuers’ payment obligations on certain notes (the “Notes”) they issued and sold to investors (the “Noteholders”). The Issuers used the proceeds from the sale of the Notes to acquire assets (the “Collateral”) that served as collateral for the Issuers’ obligations to LBSF under the Swap Agreements and for the Issuers’ obligations under the Notes.

58. The Indentures generally provide that the Noteholders will receive interest payments on the Notes from, *inter alia*, LBSF’s premium payments under the Swaps, and that they will be repaid principal from the available proceeds of the Collateral but, in most instances, only *after* payment of any amounts due to LBSF under the Swap Agreements. Accordingly, LBSF contends that if LBSF has a claim against an Issuer under the relevant Swap Agreement, LBSF’s right to payment has priority (“Senior Payment Priority”) over any claims of the respective Noteholders.

59. LBSF further contends that its Senior Payment Priority was subject to modification under the terms of the Indentures if LBSF was in default under the Swap Agreements. Upon a default by LBSF, such as a bankruptcy filing by LBSF or LBHI, the Indentures generally provide that the Noteholders’ claims against an Issuer have priority over any claims of LBSF (the so-called “Priority Flip”). In that circumstance, the Priority Flip changes LBSF’s position to junior payment priority for any early termination

payment due under the Swaps.

60. LBHI's chapter 11 filing constituted an event of default under the Swap Agreements. Accordingly, the Trustees terminated the Swaps. As a result of those early terminations, LBSF asserts that it is owed early termination payments by the Issuers consistent with its Senior Payment Priority. Nevertheless, in reliance on the Priority Flip, certain of the Issuers have made distributions of interest and principal to the Noteholders (other Trustees continue to hold the Collateral proceeds pending the outcome of the Flip Clause Litigation). LBSF contends that, if the Priority Flip had not been effected, it would be entitled to additional amounts consistent with its Senior Payment Priority, and that the amounts distributed to the Noteholders would be correspondingly reduced. LBSF contends in the Flip Clause Litigation that the Priority Flip is unenforceable under 11 U.S.C. §§ 365(e)(1) and 541(c)(1),¹² and violates the automatic stay under 11 U.S.C. § 362(a), or, alternatively, that the Priority Flip is avoidable pursuant to various other provisions of the Bankruptcy Code. LBSF seeks, among other things, a judgment that it is entitled to Senior Payment Priority, and is entitled to recover and preserve the value of the Senior Payment Priority for the benefit of the estate pursuant to 11 U.S.C. §§ 550(a) and 551. In addition to the foregoing, in the Bank of America Litigation, LBSF seeks various relief to recover amounts distributed to the Noteholders.¹³

¹² In addition to the foregoing, LBSF contends in the Bank of America Litigation that the Priority Flips are unenforceable under 11 U.S.C. § 363(l).

¹³ In the Bank of America Litigation, LBSF seeks additional relief with respect to the Pyxis Transaction and the Federation Transactions, as those terms are defined in LBSF's Fourth Amended Complaint.

61. LBSF named Citibank as a “Trustee Defendant”¹⁴ and Citi Nominees, CGMI, OSDF Ltd. and Starling Strategies Ltd. as “Noteholder Defendants” in the Bank of America Litigation. Additionally, various Citibank Entities and affiliates of Citibank Entities may be recipients of amounts traceable to a Priority Flip challenged by LBSF.

62. On July 19, 2016, this Court entered an order granting the Noteholder Defendants’ Omnibus Motion to Dismiss, dismissing with prejudice Counts I-XVI, XVIII, and XIX in the Bank of America Litigation. This order is currently on appeal before the United States District Court for the Southern District of New York. On August 29, 2016, this Court entered an order dismissing Counts XX-XXIII in the Bank of America Litigation regarding the Pyxis Transaction, as alleged against the Noteholder Defendants. The remaining counts of the Bank of America Litigation relating to the Pyxis and Federation Transactions are proceeding before this Court.

63. The disputes among the Citibank Entities and the Lehman Entities relating to the Flip Clause Litigation, including those proceeding before this Court and on appeal to the District Court, will be resolved pursuant to the Settlement Agreement, including as to the Citibank Releasees (as defined in the Settlement Agreement).

The Settlement

64. Over the past nine years, the Parties undertook numerous attempts to resolve the Disputed Matters through negotiation, without success. Given the

¹⁴ Citibank was the Trustee for Pebble Creek LCDO 2007-2. Citibank was named as a “nominal” defendant as Trustee for ZAIS Investment Grade Limited X, an Issuer which, in a noteholder capacity, received early termination payments challenged by LBSF.

complexities of the Parties' financial dealings, and the hundreds of factors impacting the amount one Party might owe to another, and the vast amounts at stake, the Parties were unable to achieve a pretrial settlement, and this case proceeded to trial, which commenced on April 25, 2017.

65. Over the next four months, the Court presided over forty-two (42) days of trial, including substantial fact and expert testimony. In late August 2017, with dozens of trial days likely still ahead, the Parties agreed to renew settlement discussions and invited the Court to confer during the process. In early September 2017, those settlement discussions commenced, and following a five-day mediation, the Parties agreed in principle to a global settlement. The final and binding terms of the Parties' settlement are embodied in the Settlement Agreement, which, subject to Court approval, will resolve all of the Settled Claims and result in the dismissal of the Citibank Entities and their affiliates from the Relevant Adversary Proceedings.

66. Pursuant to the Settled Claims, the Citibank Entities asserted approximately \$2.1 billion in claims against the Lehman Entities, the majority of which were asserted in full against LBSF, LBCC, or LBCS as primary obligor, and LBHI as guarantor. The Settled Claims involve more than thirty-thousand (30,000) transactions, including complex derivatives transactions, and include guaranty claims and claims based on loans. The Citi Derivatives Claims being settled here total approximately \$1.8 billion. The Relevant Adversary Proceedings involve dozens of causes of action based on equally complex pre-Commencement Date financial transactions involving the Citibank Entities and the Lehman Entities. Attempting to settle these disputes on an individual or

piecemeal basis has proven to be difficult and impractical. Accordingly, the Plan Administrator determined, in the exercise of its sound business judgment, that a global settlement had the potential to produce a settlement that is fair and reasonable, and in the best interests of the Lehman Entities and their respective estates and creditors. The Plan Administrator submits that the global Settlement embodied in the Settlement Agreement achieves that result.

The Settlement Agreement

67. The Settlement Agreement will result in the return of approximately \$1.74 billion to the Lehman Entities. Prior to the Petition Date, LBHI had deposited \$2 billion with Citibank. Prior to the date of this Motion, the Lehman Entities maintained deposit accounts with Citibank with an aggregate balance of approximately \$2,093,445,729. Under the Settlement Agreement, Citibank will return, and LBHI will receive, approximately \$1,743,445,729 from those deposit accounts.

68. Other material terms of the Settlement Agreement are as follows:

Timing and Process: The Parties have agreed that:

(i) the Parties have a binding and enforceable settlement as of the Settlement Date, subject only to Bankruptcy Court approval of the Settlement Agreement by Final Order (as defined in the Plan);

(ii) counsel for LBHI would file this motion (the “Approval Motion”) on the date hereof seeking approval of the material terms of the Settlement Agreement;

(iii) the Parties will use reasonable efforts to have the Approval Motion heard on shortened notice at the earliest time at which the Bankruptcy Court is available;

(iv) no later than five (5) business days following the date that an order approving the Settlement Agreement becomes a Final Order (as defined in the Plan) (the “Turnover Date”), Citibank will debit \$350

million (the “Debit Amount”) from the \$2 Billion Deposit and transfer the Debit Amount to a Citibank-owned account for the exclusive benefit of the Citibank Entities; and

(v) Citibank shall turnover any remaining amounts in the \$2 Billion Deposit, as well as all amounts held in certain other accounts at Citibank set forth on the Schedules to the Settlement Agreement (collectively, the “Turnover Amount”) to LBHI on the Turnover Date.

Relevant Claims: The claims subject to the Settlement Agreement (the “Relevant Claims”) include:

(i) the Settled Claims, and

(ii) the “Subrogated Claims,” which include:

(a) Citibank’s claim against Lehman Brothers Commercial Corporation Asia Limited (“LBCCA”) for alleged obligations of LBCCA in the aggregate approximate amount of HKD 2.18 billion under (1) the Committed Revolving Loan Agreement with Guarantee dated as of August 28, 2007 (as subsequently amended) between LBCCA and Citibank, and (2) the ISDA Master Agreement dated as of July 12, 2007 between LBCCA and Citibank; as set forth in claim number 441-B0047 filed in LBCCA’s foreign insolvency proceeding;

(b) Citibank’s claim against Lehman Brothers Securities N.V. (“LBSN”) in the aggregate approximate amount of CHF 2.7 million in LBSN’s foreign insolvency proceeding; and

(c) Citibank A.S.’s claim against LB UK RE Holdings Ltd. (“LBUK”) in the aggregate approximate amount of GBP 10.4 million in LBUK’s foreign insolvency proceeding.

The transactions contemplated by the Settlement will not be subject to any further internal approvals by the Parties, other than the Parties’ rights to review and comment on the Settlement Agreement and related documentation.

Treatment of Relevant Claims: The Settlement Agreement provides that:

- (i) On the Turnover Date, (a) the Relevant Claims asserted against LBHI will be deemed satisfied and withdrawn with prejudice, and (b) the Relevant Claims asserted against any party other than LBHI

shall be irrevocably assigned on an “as-is” basis to LBHI, in each case without any further action by any party;

- (ii) On the Turnover Date, the Citibank Entities agree and acknowledge that LBHI, as Plan Administrator, will have complete discretion, in accordance with the Plan, to determine the ultimate treatment of the Relevant Claims (e.g., the manner in which they are allowed, reserved-for, expunged, etc.).
- (iii) In the event the assignment of any Subrogated Claim is not permitted under applicable law, the parties will enter into mutually agreeable documentation to provide LBHI a 100% participation interest in the Subrogated Claims or otherwise transfer the economic benefit of the Subrogated Claims to LBHI;
- (iv) LBHI acknowledges and confirms that the Citibank Entities do not promise, guarantee or warrant that the Lehman Entities are entitled to exercise any subrogation rights, and covenants and agrees that the Citibank Entities shall not be liable for any claims, damages or losses incurred by Lehman if (a) the assignment of the Relevant Claims is not recognized or enforced for any reason in the bankruptcy or insolvency proceeding of the primary obligor liable for the Relevant Claim, or (b) LBHI is unable to receive any distribution, payment, or recovery on account of the Relevant Claims, *provided, however*, that Citibank shall promptly transfer to the Turnover Account the amount of any payments or distributions received by any Citibank Entity in respect of any of the Relevant Claims after the Turnover Date;
- (v) LBHI will indemnify, reimburse, and hold harmless the Citibank Entities for any fees (including counsel fees incurred after the Turnover Date), costs, expenses, fines, or other amounts incurred by, or imposed on, the Citibank Entities resulting from the assignment of the Assigned Claims and Subrogated Claims, including any amounts incurred by the Citibank Entities in connection with their assisting LBHI in defending or responding to any challenge or objection to the assignment of the Assigned Claims and Subrogated Claims, any challenge or objection to LBHI’s asserted subrogation rights, or other means of transferring the economic benefits of the Subrogated Claims to LBHI; *provided, however*, that prior to incurring any counsel fees, the Citibank Entities must confer in good faith and cooperate with LBHI to determine the most cost-effective means of effectuating the transfer of the economic benefit of any challenged claims,

including at LBHI's option, providing LBHI a 100% participation interest in such claims or otherwise transferring their economic benefit to LBHI.

- (vi) To the extent not paid in cash within thirty (30) days of written notice from Citibank, Citibank shall receive an allowed administrative expense claim against LBHI in an amount equal to the reasonable and documented fees, costs, expenses, fines, or other amounts incurred by, or imposed on, the Citibank Entities that are indemnified by LBHI under this Settlement Agreement.

Dismissal of Relevant Adversary Proceedings: Not later than two (2) business days following the Turnover Date, the Lehman Entities, as applicable, will dismiss with prejudice each of the Citibank Releasees, as applicable, from the Relevant Adversary Proceedings, with each party to bear its own costs.

Mutual Releases:

The Settlement Agreement contains the following releases which will occur automatically on the Turnover Date:

- (i) All of the Lehman Entities and the Committee hereby do and shall be deemed to irrevocably, unconditionally, and forever generally release, waive, and discharge each and every one of the Citibank Entities, all of their parents, subsidiaries, and affiliates, including, without limitation, Citicorp Nominees Pty Ltd., Starling Strategies Ltd., OSDF Ltd., Citigroup Investments Inc., CGI Private Equity, L.P., LLC., and Citigroup Alternative Investments LLC., and (in each case solely in their capacities as such) all of their respective property, current and former officers, directors, employees, divisions, branches, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals, agents, successors, predecessors, and representatives (each a "Citibank Releasee" and collectively, the "Citibank Releasees") from and in respect of all Disputed Matters; *provided, however*, that the foregoing release, waiver, and discharge shall not release, waive, or discharge any right or obligation under this Settlement Agreement, including the right to enforce this Settlement Agreement;

and *provided further*, that in the event that any of Citicorp Nominees Pty Ltd., Starling Strategies Ltd., OSDF Ltd., Citigroup Investments Inc., CGI Private Equity, L.P., LLC., or Citigroup Alternative Investments LLC seeks to assert, amend, or assign to any party any Action against any Lehman Entity arising from or relating to the matters, facts, and circumstances described in the Disputed Matters, the foregoing release, waiver, and discharge of that particular Citibank Releasee shall be null and void.

- (ii) All of the Citibank Entities hereby do and shall be deemed to irrevocably, unconditionally, and forever generally release, waive, and discharge each and every of the Lehman Entities and all of their parents, subsidiaries, and affiliates (in each case who are debtors in the Chapter 11 Cases), the Committee, and (in each case solely in their capacities as such) all of their respective property, current and former officers, directors, employees, divisions, branches, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals, agents, successors, predecessors, and representatives (each a “Lehman Releasee” and collectively, the “Lehman Releasees”) from and in respect of the Disputed Matters; *provided, however*, that the foregoing release, waiver, and discharge shall not release, waive, or discharge (i) any claim held by the Citibank Entities that has been asserted in a properly filed proof of claim that is not a Relevant Claim, (ii) any claim held by any of the Citibank Entities asserted in a Relevant Claim that has been previously allowed under the Plan pursuant to a prior settlement between any of the Citibank Entities and any of the Lehman Entities, and (iii) any right or obligation under this Settlement Agreement, including the right to enforce this Settlement Agreement.
- (iii) Each Lehman Entity and the Committee confirms and agrees that it will commence no further Actions against any of the Citibank Releasees, including that it will not object to or otherwise challenge claims

filed by any of the Citibank Releasees in the Chapter 11 Cases, and releases and waives any such further Action, objection or challenge; *provided, however*, that the foregoing confirmation and agreement shall not release, waive or discharge any right or obligation under this Settlement Agreement, including the right to enforce this Settlement Agreement; and *further provided, however*, that nothing in this section shall prevent any Lehman Entity from asserting any counterclaim or defense in any Action commenced against it by any Citibank Releasee after the Settlement Date.

- (iv) The Citibank Entities' and the Lehman Entities' mutual release of each shall include a full and final release of all claims related to the Collapse Transaction. Citibank covenants that: (i) neither it nor any Citibank Entity will pursue any legal or equitable claims against Bracebridge related to the Collapse Transaction; and (ii) neither it nor any Citibank Entity will seek to assign to any party any claims related to the Collapse Transaction.

Litigation Standstill: The Parties shall immediately suspend all ongoing discovery and litigation among them until the earlier of (i) the date on which the Bankruptcy Court denies the Approval Motion, or (ii) such other date as mutually agreed by Movants and Citibank.

Choice of Law/Jurisdiction: The Settlement Agreement will be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of New York (including Section 5-1401 of the New York General Obligations Law), without regard to conflicts of laws principles that would require the application of the law of another jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over any action or proceeding with respect to the Settlement Agreement and each Party agrees to submit to such jurisdiction and to waive any defense based on the location or jurisdiction of such court.

69. Although the Plan Administrator contends that many of the claims asserted by the Citibank Entities are greatly overstated and, if litigated to finality, would be greatly reduced in amount, the Plan Administrator acknowledges that there are

hundreds of variables at play, and that the outcome of litigation is inherently uncertain. Accordingly, the terms of the Settlement represent a fair compromise of the Parties' competing positions on a multitude of legal and factual disputes, taking into account the record in the Relevant Adversary Proceedings and the remaining uncertainty. Thus, the Plan Administrator has determined in its informed business judgment that entering into the Settlement is in the best interests of LBHI, LBSF, the other Lehman Entities, and their respective estates and creditors. Absent consummation of the Settlement Agreement, the Lehman Entities and the Citibank Entities likely would proceed with additional litigation, which could include time-consuming and expensive legal proceedings, including potential appeals, as well as the risks attendant to such litigation. The Settlement Agreement will enable the Lehman Entities to avoid expending further resources in connection with these disputes, while recovering approximately \$1.74 billion for the Lehman Entities' estates and creditors.

**The Settlement Agreement Is in the Lehman
Entities' Best Interests and Should Be Approved**

70. The Plan Administrator, on behalf of LBHI, LBSF, and the other Lehman Entities, submits that the Settlement Agreement is in the best interests of LBHI, LBSF, the other Lehman Entities, and their respective estates and creditors, and should be approved under Rule 9019 of the Bankruptcy Rules. Bankruptcy Rule 9019(a) provides “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.” Fed. R. Bankr. Proc. 9019(a). This rule empowers bankruptcy courts to approve settlements “if they are in the best interests of the estate.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

The settlement need not result in the best possible outcome for the debtor, but must not “fall below the lowest point in the range of reasonableness.” *Id.* (quotations omitted); *accord Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Spielfogel*, 211 B.R. 133, 144 (Bankr. E.D.N.Y. 1997).

71. Compromises are “a normal part of the process of reorganization.” *Prot. Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Compromises may be effected separately during the reorganization proceedings or in the body of the plan itself. *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 758 (Bankr. S.D.N.Y. 1992). The decision to approve a particular compromise lies within the sound discretion of the bankruptcy court. *See Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). The Court’s discretion may be exercised “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). A proposed compromise settlement implicates the issue of whether it is “fair and equitable, and . . . in the best interest of the [debtor’s] estate.” *In re Best Products*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994) (internal citations omitted). The Court must apprise itself “of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.” *Anderson*, 390 U.S. at 424.

72. Courts typically consider the following factors in determining whether a settlement should be approved: (i) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (ii) the difficulties of collecting any

litigated judgment; (iii) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay; (iv) the proportion of creditors who do not object to, or who affirmatively support, the proposed settlement; (v) the competence and experience of counsel who support the settlement; (vi) the relative benefits to be received by members of any affected class; (vii) the extent to which the settlement is truly the product of arm's-length bargaining and not the product of fraud or collusion; and (viii) the debtor's informed judgment that the settlement is fair and reasonable. *See id.*; *In re Ashford Hotels, Ltd.*, 226 B.R. 797, 804 (Bankr. S.D.N.Y. 1998); *In re Best Prods. Co.*, 168 B.R. at 50.

73. While a court must evaluate “all . . . factors relevant to a fair and full assessment of the wisdom of the proposed compromise,” *Anderson*, 390 U.S. at 424, a court need not conduct a “mini-trial” of the merits of the claims being settled, *Cosoff*, 699 F.2d at 608, or conduct a full independent investigation, *Drexel Burnham*, 134 B.R. at 505. Moreover, in reviewing a proposed global compromise, the Court need not be aware of or decide the particulars of each individual claim resolved by the settlement or “assess the minutia of each and every claim”; rather, the Court need only “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *Shugrue*, 165 B.R. at 123 (internal citations omitted). As one court explained in assessing a global settlement of claims, “[t]he appropriate inquiry is whether the Settlement Agreement in its entirety is appropriate for the . . . estate.” *Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 430 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994).

74. Here, the Settlement Agreement will benefit LBHI, LBSF, their estates, and their creditors and the other Lehman Entities. First, the Settlement Agreement will result in the turnover of approximately \$1.74 billion in deposits to LBHI's estate when Citibank returns, after debiting the Debit Amount, the remaining balance of the \$2 Billion Deposit as well as the other deposit accounts set forth on Schedule C of the Settlement Agreement. The Plan Administrator has determined, in the exercise of its business judgment, the Settlement Amount is reasonable in light of the complexities of the Relevant Adversary Proceedings, and the attendant risks and the likely costs of litigating the Settled Claims to finality. Second, entry into the Settlement Agreement will avoid future disputes and litigation, including what could be protracted appeals, concerning the Settled Claims and Relevant Adversary Proceedings.

75. In addition, the Settlement is the product of extensive arm's length negotiations and is not the product of collusion or fraud. Rather, the Settlement is the result of the Parties' shared recognition of the litigation risks to which each side is exposed, and the realization that litigating all of the Settled Claims and Relevant Adversary Proceedings to a final resolution will be exorbitantly expensive and time-consuming. The Parties thus negotiated in good faith, at arm's length, to resolve the Settled Claims and Relevant Adversary Proceedings. The Settlement will result in the return of approximately \$1.74 billion to the Lehman Entities and their respective estates, as well as the assignment or withdrawal of significant Disputed Claims (as defined in the Plan).

76. For the reasons stated above, and in the Plan Administrator's informed

business judgment, the compromises set forth in the Settlement Agreement are a “fair and equitable” resolution of the Parties’ dispute, well within the “range of reasonableness,” and are in the best interests of LBHI, LBSF, the other Lehman Entities, and their respective estates and creditors. Accordingly, the Plan Administrator requests that the Settlement Agreement be approved, effective immediately upon entry of an Order granting the relief requested herein.

**The Bankruptcy Court Has Authority Pursuant to Section 105(a)
of the Bankruptcy Code to Approve the Settlement Agreement**

77. The Plan Administrator also seeks approval of the Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code. This Court has authority under the broad equitable powers of the Bankruptcy Code set forth in section 105(a) to approve the Settlement Agreement. *See, e.g., In re A.H. Robbins*, 880 F.2d 769, 776 (4th Cir. 1989) (section 105(a) authorizes the court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code); *In re Joint E. & S. Dis. Asbestos Litig.*, 878 F. Supp. 473 (E.D.N.Y. & S.D.N.Y. 1995) and 129 B.R. 710 (E.D.N.Y. & S.D.N.Y. 1991) (holding that section 105(a) of the Bankruptcy Code authorizes the federal courts in bankruptcy cases to approve a settlement modifying distributions, obligations, and payment procedures under a trust).

78. This Court has granted similar relief in these Chapter 11 Cases pursuant to section 105(a) of the Bankruptcy Code. *See* Order Approving the Settlement Agreement Relating to Restructured Asset Certificates with Enhanced Returns, Series 2006-20AT Credit Default Swap Agreement and Trust Agreement [ECF No. 49408]; Order Approving the Settlement Agreement Relating to Exum Ridge CBO 2007-2 Credit

Default Swap Agreement and Indenture [ECF No. 48318]; Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Section 105(a) of the Bankruptcy Code for Approval of Partial Settlement Agreement Relating to SGS HY Credit Fund I (Exum Ridge CBO 2006-3) Swap Agreement and Indenture [ECF No. 45451]; Order Approving Partial Settlement Agreements Relating to Certain Credit Default Swap Agreements and Trust Agreements [ECF No. 39624]; Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving Partial Settlement Agreement Relating to Airlie CDO I, Ltd. [ECF No. 39017]; Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving Partial Settlement Agreement Relating to Pebble Creek LCDO 2007-3, Ltd. [ECF No. 36867]; Order Approving Settlement Agreement and Indemnity Between Lehman Brothers Special Financing Inc. and Deutsche Bank Trust Company Americas, as Trustee, Relating to Credit Default Swap Agreement [ECF No. 30096].

79. The use of the Court's equitable authority is justified and appropriate here.

Notice

80. No trustee has been appointed in these Chapter 11 Cases. The Movants have served notice of this Motion in accordance with the procedures set forth in the Second Amended Order entered on June 17, 2010, governing case management and administrative procedures for these cases [ECF No. 9635] on (i) the U.S. Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) the attorneys for Citibank; and (vi) all parties who have requested notice in the Chapter 11 Cases. The Movants submit

that no other or further notice need be provided.

81. No previous request for the relief sought herein has been made by the Movants to this or any other Court.

Waiver of Bankruptcy Rule 6004(h)

82. The Movants request that any order approving the Motion be effective immediately upon entry and that the Court waive the applicability of Bankruptcy Rule 6004(h).

[signature page follows]

WHEREFORE the Movants respectfully requests that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: September 29, 2017
New York, New York

Respectfully submitted,

CURTIS, MALLET-PREVOST, COLT &
MOSLE LLP

By: /s/ Peter J. Behmke
Peter J. Behmke
*Attorneys for Lehman Brothers Holdings
Inc. and Certain of Its Affiliates*

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Andrew J. Rossman
Andrew J. Rossman
*Attorneys for the Official Committee of
Unsecured Creditors*